

(13)

Office - Supreme Court
FILED
MAY 27
CHARLES ELMORE

IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

No. **1039** 104

MARY SUE MAGRUDER, *Petitioner*,

v.

CHRISTINE MAGRUDER, HARRY F. MAGRUDER, ALICE E. MOSE,
ET AL., *Respondents*.

**PETITION FOR CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DIS-
TRICT OF COLUMBIA AND BRIEF IN SUPPORT.**

JAMES J. HAYDEN,
1323 18th Street, N. W.,
Washington 6, D. C.
Attorney for Petitioner.

INDEX.

PETITION.

	Page
Statement of the matter involved	1
Jurisdiction of this Court	2
Question presented	2, 3
Reasons for granting certiorari	3, 4

BRIEF.

Text of Sections 16-1301, 16-1302, 16-1305, D. C. Code, 1940 ed.	5, 6, 7
--	---------

Argument :

- I. It is settled law that the construction of a statute by a state becomes part of that statute when it is adopted by Congress 7, 8, 9, 10, 11
- II. The Court of Appeals has decided a question of general importance, and a statute of the United States, which has not been but should be settled by this Court 11, 12

Conclusion	12
------------------	----

CITED IN BRIEF.

STATUTES :

1901, Mar. 3, ch. 854, 31 Stat. 1203	6, 7
1901, Mar. 3, ch. 854, 31 Stat. 1202	7
1902, June 30, ch. 1329, 32 Stat. 523	6, 7
Judicial Code, Section 240	2
District of Columbia Code, (1940 ed.)—	
Section 16-1301	5, 6
Section 16-1302	6
Section 16-1305	7
Code of Maryland, (1939 ed.)—	
Article 16:	
Section 46	7
Section 48	8
Section 50	8

CASES:	Page
Capital Traction Co. v. Hof, 174 U. S. 1, 36	3, 10
Conrad v. Crouch, 68 W. Va. 378, 69 S. E. 888	12
Grayson v. Harris, 279 U. S. 300, 303	3, 10
Hasler v. Williams, Eq. No. 28248, Sp. Ct. D. C. now U. S. Dist. Ct. aff. on other grounds, 34 App. D. C. 319	11
Haugh v. Peirce, 97 Me. 281, 54 A. 727	11
Hawley v. Hawley, 72 App. D. C. 376, 380, 114 F. 2d 745	10
Jenks v. Terrell, 73 Ala. 238	11
Joines v. Patterson, 274 U. S. 544, 549	3, 10
Lee v. James, 81 Ky. 443	12
Metropolitan R.R. Co. v. Moore, 121 U. S. 558, 572	3, 10
Phelps v. Stewart, 17 Md. 231, 240	9, 10, 11
Shipley v. Mercantile Trust Co., 102 Md. 649, 62 A. 814, 818	9, 11
Stein v. Stein, 80 Md. 306, 30A, 703, 704	9, 10, 11
Willis v. Eastern Trust Co., 169 U. S. 295, 307	3, 10
Opinion of U. S. Court of Appeals for the District of Columbia, March 6, 1944 (R. 5-8)	1, 11

IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

No. _____

MARY SUE MAGRUDER, *Petitioner*,

v.

CHRISTINE MAGRUDER, HARRY F. MAGRUDER, ALICE E. MOSE,
ET AL., *Respondents*.

Petition by Mary Sue Magruder for a Writ of Certiorari for the Review of a Judgment of the United States Court of Appeals for the District of Columbia, Entered March 6, 1944 (Petition for Rehearing or Modification of Judgment Denied April 7, 1944), Reversing a Final Order of the District Court of the United States for the District of Columbia Entered October 28, 1942, Denying a Motion of Plaintiff for the Partition and Sale of Real Estate Free of Defendant's Dower Interest Without the Consent of the Defendant.

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

This petition seeks to bring to this court for review by certiorari the decision of the United States Court of Appeals of March 6, 1944 (R. 5-8), construing the Acts of Congress of March 3, 1901, 31 Stat. 1202, 1203, Ch. 854, and of

June 30, 1902, 32 Stat. 523, Ch. 1329, Sections 16-1301 to 16-1306, inclusive, of the District of Columbia Code (1940 ed.).

Said Acts, and more specifically, Sections 16-1301, 16-1302, and 16-1305, provide the mode of partition and sale of land in the District of Columbia owned by tenants in common in cases where the land is subject to dower, and also in cases where it is not subject to dower. We are concerned only with the case where the land is subject to dower. The District Court held that under said Acts the court had no power to order a partition and sale of real estate in the District of Columbia free from the dower interest of the defendant widow without her consent, which she declined to give. The plaintiffs are fee owners as tenants in common of said land under the will of their father. The Court of Appeals reversed the District Court and held that the court did have power to order such partition and sale free of dower without the widow's consent under the terms of Sections 16-1301, 16-1302, and 16-1305.

Petitioner believes that the foregoing statement complies with the Rules of this Court requiring "a summary and short statement of the matter involved." (Rule 38, par. 2).

The text of Sections 16-1301, 16-1302, and 16-1305, aforesaid is printed at the beginning of the accompanying brief in support of this petition.

JURISDICTION OF THIS COURT.

This Court has jurisdiction to review this case under the provisions of Section 240 of the Judicial Code, as amended, 28 U. S. C. A. 347.

QUESTION PRESENTED.

The sole question presented in this petition is whether or not the United States Court of Appeals for the District of Columbia erred in its construction of the aforesaid Acts of Congress, and more specifically, Sections 16-1301, 16-1302, and 16-1305, aforesaid.

This question arises on the following undisputed facts (R. 1):

Petitioner is the widow of William M. Magruder, deceased. Respondents are the seven children of the said William M. Magruder, and by his will became the owners as tenants in common of Lot 61, Square 4063, improved by a brick dwelling numbered 1238 Neale Street, N. E., District of Columbia, subject to the dower right of petitioner herein. The property is indivisible for partition in kind. Respondents filed suit asking that the premises be sold free from the dower right of petitioner and that the proceeds be divided among the parties according to their respective interests. Petitioner declined to consent to such a sale and partition free from her dower interest. The District Court upheld her contention. The Court of Appeals reversed.

REASONS FOR GRANTING CERTIORARI.

I. The Court of Appeals has not given proper effect to the applicable decisions of this Court.

Metropolitan R. R. Co. v. Moore, 121 U. S. 558, 572.
Willis v. Eastern Trust Co., 169 U. S. 295, 307.
Capital Traction Co. v. Hof, 174 U. S. 1, 36.
Joiner v. Patterson, 274 U. S. 544, 549.
Grayson v. Harris, 279 U. S. 300, 303.

The cases cited above hold that when Congress adopts the statute of a state, it adopts also the construction placed upon that statute by the state prior to its adoption by Congress. Sections 16-1301, 16-1302, and 16-1305 were adopted by Congress from the statutes of Maryland, but the Court of Appeals failed to follow the applicable Maryland decisions in effect when the statute was adopted.

II. The Court of Appeals has decided a question of general importance, and a statute of the United States, which has not been but should be settled by this Court.

While the effects of statutes applicable only to the District of Columbia are primarily of local concern, the fact is that the statutes in question in this case were adopted from the law of Maryland, and are similar in effect to those of many other states. Moreover, Sections 16-1301, 16-1302, and 16-1305 have never been construed by this Court, and their proper construction should be settled by this Court to establish some degree of certainty in the applicable law of property in the District of Columbia.

Respectfully submitted,

JAMES J. HAYDEN,
1323 18th Street, N. W.,
Washington 6, D. C.
Attorney for Petitioner.